

From: [Fowler, Sarah](#)
To: [Silver, Wendy](#)
Subject: FW: Wetlands in Mountain Village,CO
Date: Monday, December 14, 2015 11:01:00 AM

(b) (5) Attorney Client

Sarah Fowler
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Ecosystem Protection Program, EPA Region 8
303-312-6192

From: (b) (6)
Sent: Thursday, December 10, 2015 12:38 AM
To: Fowler, Sarah; Silver, Wendy; Fowler, Sarah
Subject: Wetlands in Mountain Village,CO

Dear Ms. Fowler and Ms. Silver:

I am writing to discuss the status of wetlands in Mountain Village.

The recent loss of the 1996 EPA Consent Decree (deemed satisfied on 11/2014) and the final sign-off on the mitigation for SPK-2005-75097 (deemed satisfied on 6/3/2015) have left several Mountain Village wetlands vulnerable to new development. The ink has not yet dried on these sign-offs and already Mountain Village has begun a new wetland development program.

The Town of Mountain Village has a deep understanding of the loopholes available to them to develop wetlands: former Telski executives Ron Allred and Jim Wells are advising the Town and the Hospital District on developable sites, Ron Allred's former assistant Kim Montgomery is now the Town Manager, Jim Mahoney (whose family ran the MV Metro District during the EPA litigation) is now the Town Attorney, and so on. The Town of Mountain Village may be able to outmaneuver the Army Corps, but the EPA still has the upper hand through aggressive Section 404 enforcement.

The most practicable methodology for the EPA to protect Mountain Village wetlands going forward is to deny all Section 404 permits and to begin demanding restoration on sites where an applicant is documenting a wetlands decline.
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Past Shell Games on Lots 1001/1003/1005/1007

The 3 wetlands most vulnerable to development are located near Mountain Village Town Hall and straddle 5 properties (Lots 1001,1003,1005,1007 and OS1-R1). Lot 1003 is the proposed THD medical site with Lots 1005 and OS1-R1 impacted downstream, Lot 1007 was the proposed TSRC conference site, and Lot 1001 was the proposed site for snow storage from the Lofts Condominiums. Nearly 10% of the 1996 EPA Consent Decree was devoted to documenting, mapping, and restoring these specific sites. Collectively they were known as Wetlands Complex #9 and #10 and formed the basis of Restoration Project #12. Unfortunately, 4 of these lots were transferred by Telski executives into quasi-governmental agencies (which they controlled) before the consent decree was signed. Thus, it may have been their interpretation that these restored wetlands were not required to be placed into conservation easements. To date, I have not found any conservation easements recorded against these properties. Protection of these restoration sites will have to

be done through vigorous Section 404 enforcement.

SPK-2005-75097 Can't be Simultaneously SATISFIED and NOT SATISFIED

Army Corps Engineers Carrie Sheata and Ben Wilson conducted a site visit of Lot 1003 (the Medical Center site) on 6/3/2015 and signed off on the wetlands mitigation associated with SPK-2005-75097 using data provided by town consultant Terra Inc. Simultaneously on this lot, the Town of Mountain Village presented data by Town Employee Pat Drew in application SPK-2014-01067 claiming that the wetlands on this lot were in decline and purporting a reduction to .44 acres from the .69 acres in a 2006 delineation.

It is difficult to reconcile these conflicting findings. I suspect that the USACE finding of satisfaction is correct; and that the Town finding of wetland loss is a **self-serving lowball-estimate** to reduce their required mitigation. The wetland portion of Lot 1003 is probably closer to the 2006 delineation of .69 acres and possibly even 1.0 acres based on the 1996 Consent Decree delineation (MP-1). Either way, the full 1.0 acres from 1996 should be the baseline for determining required mitigation. Using the lower estimate of wetland acreage only rewards the town's current wetland policy of "benign neglect" and enables more development while requiring less mitigation.

Possible Delineation Bias

The wetlands delineation of Lot 1003 was performed by Pat Drew. Mr. Drew is not on the Army Corps wetlands consultant list – probably because he is a full-time employee of the Town of Mountain Village. His wife, Deanna Drew, is also a full-time employee of the town (ironically head of the environmental department); as is Virginia Drew (Mr. Drew's mother). As such, he is acutely vulnerable to economic reprisal by his employer, and, given the Town's "pro-wetland-development" stance, an unbiased analysis of Lot 1003 would be difficult for him to conduct.

I believe the EPA needs to act strongly at this juncture in order to deter Mountain Village from an expansive wetland development program. An aggressive stance by the Army Corps and EPA will help ensure that the past gains achieved through 6 years of litigation and 20 years of monitoring are preserved.

As these comments are general in nature and not associated with any specific permit, I ask that they not be subject to a FOIA release without my consent.

Sincerely,

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